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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4334

13 **MICHAEL TODD PETERS**
7302 Larkspur Lane
Stockton, CA 95207

A C C U S A T I O N

14 Pharmacist License No. RPH 48263

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 21, 1995, the Board of Pharmacy ("Board") issued Pharmacist
22 License Number RPH 48263 to Michael Todd Peters ("Respondent"). The Pharmacist License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 June 30, 2013, unless renewed. Respondent was the Pharmacist-In-Charge of Country Club Drug
25 Store, located in Valley Springs, California, Pharmacy License Number PHY 49019, at all times
26 relevant to the charges brought herein.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 4300 of the Code authorizes the Board to suspend or revoke any license issued by the Board or to take any other action in relation to disciplining the licensee as the Board in its discretion may deem proper.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

7. Section 4081 of the Code states, in pertinent part:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section

16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous rugs or dangerous devices.

8. Section 4105 of the Code states, in pertinent part:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

9. Section 4113 of the Code states, in pertinent part:

(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

10. Section 4332 of the Code states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

11. Section 4022 of the Code states, in pertinent part:

"Dangerous drug" . . . means any drug . . . unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(c) Any other drug . . . that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

REGULATORY PROVISION

12. California Code of Regulations, title 16, section 1708.2 provides:

Any permit holder shall contact the board prior to transferring or selling any dangerous drugs, devices or hypodermics inventory as a result of termination of business or bankruptcy proceedings and shall follow official instructions given by the board applicable to the transaction.

13. California Code of Regulations, title 16, section 1718, states:

'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of inventory.

14. **DRUGS**

BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER CODE SEC. 4022	CONTROLLED SUBSTANCE PER HEALTH & SAFETY CODE SEC.	INDICATIONS FOR USE
Xanax Nirvam	alprazolam	Yes	HSC 11057(d) – Schedule IV	Anxiety
Valium	diazepam	Yes	HSC 11057(d) – Schedule IV	Anxiety
Lortab Norco Vicodin	hydrocodone with acetaminophen	Yes	HSC 11056(e)(4) – Schedule III	Pain
Percocet Endocet Roxicet	oxycodone with acetaminophen	Yes	HSC 11055(b) – Schedule II	Pain

COST RECOVERY

15. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Complete Accountability of Dangerous Drugs)

16. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (j) and (o), on the grounds of unprofessional conduct, and in conjunction with California Code of Regulations, title 16, section 1718, in that Respondent failed to comply with Code sections 4081, subdivision (a), and 4105, subdivision (a). The circumstances are as follows:

a. A Board audit for the period of March 15, 2010, to December 1, 2011, at Country Club Drug Store, while Respondent was the pharmacist-in-charge, determined an inventory shortage (acquisitions greater than dispositions) of dangerous drugs as follows: (i) 1,997 alprazolam 1mg tablets; (ii) 1,680 diazepam 10mg tablets; (iii) 17,780 oxycodone with acetaminophen 10/325mg tablets; (iv) 1,366 oxycodone with acetaminophen 5/325mg tablets;

1 (v) 81,538 hydrocodone with acetaminophen 10/325 tablets; (vi) 19,974 hydrocodone with
2 acetaminophen 10/500mg tablets; and, (vii) 21,885 hydrocodone with acetaminophen 5/500mg
3 tablets; for a total of 146,220 tablets unaccounted for.

4 b. During a December 1, 2011, Board inspection of Country Club Drug Store, while
5 Respondent was the pharmacist-in-charge, Respondent had in his possession a box of "take back"
6 prescription drugs which patients of the pharmacy provided to the store to discard on their behalf.
7 Respondent had no records of acquisition to account for the "take back" inventory and had no
8 records to account for the destruction of those drugs.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Subverted or Attempted to Subvert Board Investigation)**

11 17. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
12 subdivision (q), on the grounds of unprofessional conduct, in that Respondent engaged in conduct
13 that subverted or attempted to subvert a Board investigation. The circumstances are as follows:

14 a. Respondent failed to comply with the Board's official instructions to provide
15 copies of records of disposition for the dangerous drugs in prescription bottles for return to stock
16 (which had not been acquired by the successor company purchasing Country Club Drug Store).
17 The records were relevant to the Board's audit and inspection of December 2, 2011.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Follow Board's Instructions -- Dangerous Drugs)**

20 18. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
21 subdivision (o), on the grounds of unprofessional conduct, in conjunction with California Code of
22 Regulations, title 16, section 1708.2. The circumstances are as follows:

23 a. Respondent failed to comply with the Board's official instructions to submit to the
24 Board, the Discontinuance of Business form, a copy of the closing controlled substances
25 inventory report, and the original wall/renewal license.

26 **DISCIPLINARY CONSIDERATIONS**

27 19. To determine the degree of discipline, if any, to be imposed on Respondent,
28 Complainant alleges:

a. On or about September 1, 2010, the Board issued Citation Number CI-2010-45568 to Respondent for the following violations: Health and Safety Code (“HSC”) section 11165, subdivision (d) (\$750.00 fine); Business and Professions Code (“Code”) section 4125 and California Code of Regulations (“CCR”) title 16, section 1771 (\$250.00 fine); CCR section 1793.7, subdivision (e) (\$250.00 fine); Code section 4104, subdivision (b) (\$250.00 fine); Code section 4115, subdivision (f)(1) (\$500.00 fine); Code section 4076, subdivision (a)(5) (cited without a fine); Code section 4059, subdivision (a) (\$250.00 fine); Code sections 4081, subdivision (a), and 4105 (\$1,000.00 fine); and, Code section 4060 and HSC section 11158, subdivision (a) (\$1,000.00 fine); and, Code section 4301, subdivision (g) (“\$500.00 fine). Respondent appealed the Citation.

On or about November 3, 2010, the Board issued Modified Citation and Fine Citation Number CI-2010-45568 as follows: HSC section 11165, subdivision (d) (cited without a fine); Code section 4125 and CCR section 1711 (cited without a fine); Code section 4104, subdivision (b), (\$250.00 fine); Code section 4115, subdivision (f)(1) (\$250.00 fine); Code section 4060 and Health and Safety Code section 11158, subdivision (a) (\$250.00 fine); and Code section 4301, subdivision (g) (citation without a fine). The Board notified Respondent that the total amount of the modified fines was \$750.00 and payment was due by December 1, 2010. Respondent timely paid the fines.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacist License Number RPH 48263 issued to Michael Todd Peters;
2. Ordering Michael Todd Peters to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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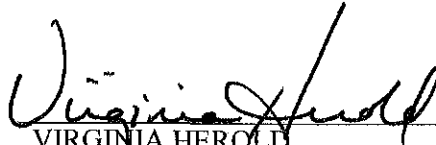
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3. Taking such other and further action as deemed necessary and proper.

DATED:

9/25/12



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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